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SUPREME COURT, U.S.

No. 81-53

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

THE STATE OF FLORIDA,

Petitioner,

v.

WILLIE ALLEN GARRETT,

Respondent.

On Petition for a Writ of Certiorari to the
District Court of Appeal of Florida,
Third District

RESPONDENT'S BRIEF IN OPPOSITION

LOUIS R. BELLER
American Civil Liberties Union
Foundation of Florida, Inc.
420 Lincoln Road
Suite 238
Miami Beach, Florida 33139

BRUCE J. WINICK
American Civil Liberties Union
Foundation of Florida, Inc.
University of Miami School
of Law
P.O. Box 248087
Coral Gables, Florida 33124
(305) 284-2971

TERRY L. DeMEO
DeMeo & Sherman, P.A.
American Civil Liberties Union
Foundation of Florida, Inc.
3081 Salzedo Street
Coral Gables, Florida 33134

QUESTIONS PRESENTED

1. Whether the decision of the court below reversing Respondent's conviction and ordering that the trial court discharge him unless the state shall elect to commence civil proceedings within thirty days was based on former Florida Rule of Criminal Procedure 3.210(a)(5) and present Florida Rule of Criminal Procedure 3.217(b), an independent and adequate state law ground precluding review by this Court on certiorari?

2. Whether the court below's reversal and order of discharge on facts involving the confinement for almost an eight year period of an incompetent accused was based on the federal constitutional principles embodied in Jackson v. Indiana, 406 U.S. 715 (1972), and if so, whether such a holding would conflict with Jackson?

3. Whether the federal constitutional right to speedy trial was violated by a delay of almost eight years, all but at most several months of which is chargeable to the state as a result of a combination of prosecutorial and judicial action designed to frustrate Respondent's opportunity to face his charges by repeatedly halting the medical treatment that psychiatrists warned was necessary to maintain his competence to stand trial, as well as from judicial inaction in violation of state law and from clerical error and neglect by a series of court clerk, jailers, hospital officials and prosecutors, where this lengthy delay was objected to on many occasions by Respondent, and resulted in pre-trial incarceration of the most oppressive kind, exacerbated Respondent's mental illness, and impaired the possibility of his mounting either a factual defense or a defense based on legal insanity?

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OPINIONS BELOW

The opinion of the District Court of Appeal of Florida, Third District, is reported at 390 So.2d 95, and appears in the Appendix to the Petition for Certiorari at pp. App. 1- App.4. The opinion of the Supreme Court of Florida, denying review, is unreported, and appears in the Appendix to the Petition for Certiorari at pp. App. 6-App.7.

CONSTITUTIONAL PROVISIO AND FLORIDA RULES OF CRIMINAL PROCEDURE INVOLVED

Former Florida Rule of Criminal Procedure 3.210(a)(5), adopted in 1972, In re Florida Rules of Criminal Procedure, 272 So.2d 65 (Fla. 1972), and substantially modified by amended Rule 3.210 on February 10, 1977, effective July 1, 1977, 343 So.2d 1247 (Fla. 1977), provided as follows:

> RULE 3.210. Insanity
>
> (a) At Time of Trial.
>
> (5) If at any time after such commitment the Court decides, after hearing, (1) that there is no substantial probability that the defendant will become mentally competent to stand trial within the foreseeable future or (2) that no progress is being made toward that goal, it shall enter an order accordingly and shall find and adjudge the defendant not guilty by reason of insanity and forthwith direct the institution of civil proceedings for the commitment of the defendant. The defendant shall remain in custody until determination of the civil proceedings.

Florida Rule of Criminal Procedure 3.217(b), adopted July 18, 1980, effective July 1, 1980, 389 So.2d 610 (Fla. 1980), provides as follows:

> RULE 3.217 Judgment of Not Guilty by Reason of Insanity: Disposition of Defendant
>
> (b) When a person tried for an offense shall be acquitted for the cause of insanity, if the court shall then determine that the defendant presently meets the criteria set forth by law, the court shall commit the defendant to the Department of Health and Rehabilitative Services for involuntary hospitalization or placement, or shall order that he receive outpatient treatment at any other appropriate facility or service on an outpatient basis, or shall discharge the defendant.

STATEMENT OF THE CASE*

Petitioner's Statement of the Case contains a number of inaccuracies and mischaracterizations of the record.**

* References to the various portions of the record on appeal will be referred to in accordance with the citation form set forth in footnote on page 2 of the Petition for Certiorari.

**For example, Petitioner's formulation of the Question Presented contains no less than three blatant and misleading errors. The Petitioner refers to Respondent's plea of guilty (Petition for Certiorari, p. i), whereas, in fact, as the court below found, "[h]e entered a nolo plea reserving the right of appeal to this court." 390 So.2d at 96. Petitioner's Question also asserts that Respondent "was at all times civilly committable . . . ." (Petition for Certiorari, p. i) Although Respondent was repeatedly examined for competency to stand trial and adjudications entered on this issue, the trial court never considered the issue of whether he was civilly committable. Petitioner's Question also asserts that the Respondent "was not shown to be prejudiced in his ability to defend as a result of the length of the delay . . . ." (Petition for Certiorari, p. i) In fact, Respondent was seriously prejudiced by the almost eight year delay, as described in detail in Respondent's brief below. (Brief of Appellant, pp. 43-49) He was subjected to oppressive pretrial detention of the worst possible kind, having been held in a barren safety cell at the Dade County Jail, which Respondent himself referred to as "the hole" (R. 174A), and in the notorious forensic wards of South Florida State Hospital and Florida State Hospital at Chattahoochee, facilities described by the Clinical Director of South Florida State Hospital as possessing insufficient staff to involve the patients in any type of psychotherapy (TR. 179). Moreover, court interference with needed treatment hindered Respondent's progress toward mental health and resulted in substantial deterioration of his condition (TR. 110-36, 142-48, 157-60, 178), and possibly resulted in permanent impairment. (TR. 178) Respondent also experienced considerably anxiety and concern over his charges pending for almost an eight-year period, as well as over the practices he was subjected to. (R. 5, 9, 166, 215, TR. 231) Moreover, the lengthy delay hampered Respondent's ability to mount a factual defense as a result of the passage of time between initial statements given by the State's witnesses and the time of trial (R. 95, TR. 107, Petitioner's Supplemental Brief, p. 8, State of Florida ex rel. Garrett v. Morphonios, 356 So.2d 392 (Fla. 3d DCA 1978), as well as his ability to raise a legal insanity defense. (R. 95, TR. 107).

However, the existence of an independent and adequate state ground for the decision below renders unnecessary a complete review at this point of the extremely detailed and lengthy factual record in this case. Respondent will, therefore, simply note his objection to Petitioner's characterization of the opinion below as "based exclusively on Jackson v. Indiana . . . ." (Petition for Certiorari, p. 17) The opinion below is somewhat ambiguous. Although it quotes from Jackson, it also contains language which, given the factual and legal context of this case, strongly suggests the likelihood that the court below's decision was based not on federal constitutional principles, but on former Florida Rule of Criminal Procedure 3.210(a)(5). This state rule, repealed in 1977, mandated the relief provided by the court below (discharge unless the state shall elect to commence civil proceedings).

That Jackson v. Indiana may not have been the basis for the decision of the court below is hinted at by Petitioner's expression of surprise concerning the lower court decision. (Petition for Certiorari, p. 17) Petitioner correctly points out that the briefs filed in the lower court by both sides "exclusively addressed Garrett's speedy trial claims. The decision of Jackson v. Indiana, 406 U.S. 715 (1972), was not relied on at all in these briefs." (Petition for Certiorari, p. 17)

A close reading of the somewhat ambiguous lower court opinion reveals the reason for Petitioner's surprise. It is true that the parties only briefed the speedy trial claims and that the court below did not address them. However, although the court below quoted from Jackson, and stated that Respondent had "been held more

than a 'reasonable period' without the requisite determination of the likelihood of his eventual ability to stand trial," 390 So.2d at 97, the court's reversal and discharge of Respondent is not based on Jackson. Rather, it is based on the lower court's holding that "since it appears that the trial court was of the opinion that Garrett was per se incompetent while under the influence of his medication--a belief not legally untenable until 1977 (when Section 918.15)(4)(a), supra, was passed), it is clear that had the court held the hearing mandated by Jackson, at any time prior to 1977, it would necessarily have found Garrett permanently incompetent." 390 So.2d at 97 (emphasis added). Although the court below did not refer to it, former Florida Rule of Criminal Procedure 3.210(a)(5), in effect from 1972 to 1977, required that a trial court which found no substantial probability that the defendant would become mentally competent to stand trial within the foreseeable future, "shall enter an order accordingly and shall find and adjudge the defendant not guilty by reason of insanity and forthwith direct the instutution of civil proceedings for the commitment of the defendant."

Thus, the court below based its decision on the fact that under state law, as it existed in 1977, had the trial court held the hearing mandated by Jackson, it would have found the defendant not guilty by reason of insanity under Rule 3.210(a)(5). Although Respondent's brief in the court below did not rely on Rule 3.210(a)(5), in view of its revision, effective July 1, 1977, abolishing the not guilty by reason of insanity adjudication for those found permanently incompetent, Rule 3.210(a)(5) had been raised by Respondent at the

trial court no less than six separate times during the years 1973 to 1977. The Petition for Certiorari itself mentions five of these instances--defense attempts to have Respondent declared not guilty by reason of insanity under Rule 3.210(a)(5) on April 12, 1973 (Petition for certiorari, p. 8), June 26, 1974 (id. at 9), December 3, 1975 (id. at 12), October of 1976 (id. at 13), and March 2, 1977 (id. at 14). These six instances were well known to the court below, as they had been pointed out in the various briefs filed therein. (Brief of Appellant, pp. 12-13, 15, 18, 21, 22-25; Brief of Appellee, pp. 5, 7-8, 25-26; Reply Brief of Appellant, pp. 5-7). Thus, although Respondent did not brief the Rule 3.210(a)(5) issue in the court below, that court was well acquainted with Respondent's repeated attempts to raise that issue in the trial court and could certainly therefore have based its decision on this state law issue rather than deal with the constitutional speedy trial claim Respondent had pressed.

Petitioner's Motion for Rehearing in the court below itself recognized that the lower court's decision was based on the "failure of the trial court to hold a hearing as to the likelihood of Appellant's eventual ability to stand trial and the fact that it is apparent from the record that had such a hearing been held, the trial court would have necessarily found Appellant permanently incompetent." (Petition for Certiorari, p. App. 8) Petitioner argued on rehearing that this issue was improperly reached as it had not been raised as an issue in the case. (Id. at App. 8-9) This, of course, is purely a state law issue, which the court below, in denying rehearing, and the Supreme Court of Florida, in denying

review, resolved against Petitioner's contention.

We thus believe that the court below based its decision on state law, rather than on the constitutional dictates of Jackson. The language in the decision below quoted from Jackson (390 So.2d at 97) does not, as even Petitioner points out, require reversal and discharge; it only requires the institution of civil commitment proceedings or release. Former Florida Rule of Criminal Procedure 3.210(a)(5), when read in conjunction with present Florida Rule of Criminal Procedure 3.217(b), does, however, require initiation of commitment proceedings or discharge. Rule 3.210(a)(5) required an adjudication of not guilty by reason of insanity that would, of course, be inconsistent with Petitioner's nolo plea and would require its reversal. Had the trial court made a determination under Rule 3.210(a)(5) "at any time prior to 1977," 390 So.2d at 97, it would thus have adjudicated him not guilty by reason of insanity. However, in 1980, at the time of the court below's decision, Rule 3.210(a)(5) had been repealed. As a result, the court below could not have required that that Petitioner be adjudicated not guilty by reason of insanity in 1980. Nor did it do so in its opinion. It simply reversed his conviction and ordered the trial court to discharge him unless the state elected to commence civil proceedings. This is fully consistent with the way in which an individual adjudicated not guilty by reason of insanity would have been treated under Florida law in 1980 pursuant to Florida Rule of Criminal Procedure 3.217(b), requiring civil commitment or discharge. This analysis, although concededly not spelled out by the court below, is the only one consistent with the remedy provided, and thus

indicates that the decision of the court below was based on state law rather than on the constitutional dictates of Jackson v. Indiana.

REASONS WHY THE WRIT SHOULD BE DENIED

1. THE DECISION BELOW WAS BASED ON AN INDEPENDENT AND ADEQUATE STATE GROUND.

This Court has consistently adhered to the principle that it will not reverse a state court judgment based upon an adequate and independent state ground, even though a federal question might be involved and perhaps wrongly decided. E.g., Fox Film Corp. v. Muller, 296 U.S. 207 (1935); Berea College v. Kentucky, 211 U.S. 45, 53 (1908); Murdock v. Memphis, 20 Wall. 590, 636 (1875). As we have contended in our Statement Of The Case, the decision below was based not on Jackson v. Indiana, as the Petitioner asserts, but rather on state rules of criminal procedure. Where, as here, adequate state grounds are asserted and appear reasonable, this Court has held that a "petitioner, in order to establish our jurisdiction, must demonstrate that neither of these state grounds can account for the decision below." Durley v. Mayo, 351 U.S. 277, 281 (1956). Petitioner's burden of establishing jurisdiction is not met if "it appears that the judgment [below] might have rested upon a nonfederal ground . . . ." Id; Ellis v. Dixon, 349 U.S. 458, 459 (1955); Stembridge v. Georgia, 343 U.S. 541, 547 (1952).

Not only is the decision of the court below, when properly analyzed, based on state law grounds, but even if it is based on both federal and state law grounds, it is clear that the relief provided under state law is sufficiently broad, without reference to the federal issue, to sustain the judgment of the court below.

The court below found that Respondent would have been found permanently incompetent had that issue been considered in 1977. Both Jackson and Florida Rule of Criminal Procedure 3.210(a)(5) independently required consideration of this issue, and the Florida rules, independent of Jackson, required the remedy provided by the court below. Thus, the decision below is based not only on a non-federal ground, but on one that is adequate to support the judgment. See Eustis v. Bolles, 150 U.S. 361, 370 (1893); Murdock v. Memphis, 20 Wall. 590, 636 (1875).

2. EVEN IF THE DECISION BELOW IS CONSTRUED TO REST SOLELY ON JACKSON v. INDIANA, DISMISSAL OF CHARGES ON OUTRAGEOUS FACTS SUCH AS THOSE PRESENTED HERE WOULD NOT CONFLICT WITH JACKSON OR WITH ANY OTHER DECISION OF THIS COURT.

If the decision below is construed to rest entirely on Jackson v. Indiana, 406 U.S. 715 (1972), certiorari should nevertheless be denied as dismissal of charges against an incompetent defendant on facts such as these would not present a conflict with Jackson or with any other decision of this Court. In Jackson, this Court explicitly recognized that in some cases due process will require dismissal of charges against an incompetent accused. 406 U.S. at 740. Although on the facts of Jackson, this Court declined to reach the defendant's argument that "fundamental fairness requires that the charges against him shall be dismissed," id. at 739, the Court noted that "Jackson's claim is a substantial one . . . ." The Court however, declined to decide the issue "at this time." Id. In so doing, however, the Court explicitly recognized that "[d]ismissal of charges against an incompetent accused" may, in appropriate cases, be justified either on speedy trial grounds or as a result of "the denial of due process inherent in holding

pending criminal charges indefinitely over the head of one who will never have a chance to prove his innocence." Id. at 740.

The facts of this rather unique case involve nearly an eight year period in which an incompetent accused was detained without regaining his competency due to the trial court, in concert with the prosecution, repeatedly and needlessly halting the medical treatment that was necessary to maintain Respondent's competence to stand trial. Such facts graphically present the due process problem referred to in Jackson. It therefore would not have been inconsistent with Jackson for the court below to dismiss Respondent's charges on these grounds.

In any event, the issue of whether due process may require dismissal of charges against an incompetent accused on outrageous facts as are here presented is not a sufficiently substantial issue to warrant this Court's review. The decision below turns upon its own unique facts, will effect no one other than Respondent, and involves a fact pattern--the application of a rule automatically barring from trial competent defendants who require ongoing psychotropic medication--that cannot reoccur in Florida as a result of statutory change adopted partially in response to the facts of this very case. Fla. Stat. § 918.15(4).

3. EVEN IF JACKSON v. INDIANA IS HELD NOT TO REQUIRE DISMISSAL OF CHARGES ON FACTS SUCH AS THESE, THE SAME RESULT WOULD BE REQUIRED UNDER THE SPEEDY TRIAL PROVISIONS OF THE FLORIDA RULE OF CRIMINAL PROCEDURE AND THE UNITED STATES CONSTITUTION.

The court below never reached Respondent's substantial contentions that his right to a speedy trial under the Florida Rules of Criminal Procedure and the Florida and the United States

Constitution was violated by the almost eight year delay between Respondent's arrest and his plea of nolo, specifically reserving his right to appeal on this basis. Thus, were this Court to conclude that the grounds relied on by the court below were improper, it would nonetheless have to consider and reject Respondent's speedy trial claims before reversing the decision below. Respondent will not here develop in detail his speedy trial contentions, which are extensively developed in the fifty page Brief of Appellant filed in the court below. We will, however, simply summarize the contentions to demonstrate that a substantial claim under Barker v. Wingo, 407 U.S. 514 (1972), is presented.

All but at most several months of this almost eight year inordinate delay is chargeable to the state. It resulted from a combination of prosecutorial and judicial action designed to frustrate Respondent's opportunity to face his charges by repeatedly halting the medical treatment--antipsychotic medication--that psychiatrists repeatedly had warned was necessary to maintain his competence to stand trial. It also resulted, in part, from judicial inaction in violation of the clear mandate of Florida law, from clerical error and neglect by a series of court clerks, jailers and hospital officials, and from a general failure of the prosecution to fulfill its duty to take affirmative action to return Respondent to trial as promptly as possible. This lengthy delay, objected to on many occasions by Respondent, resulted in pretrial incarceration of the most oppressive kind, exacerbated Respondent's mental illness, and impaired the possibility of his mounting either a factual defense or a defense based on legal insanity (which

focuses on his mental condition almost eight years before). In cases such as this involving incompetent defendants confined for lengthy periods, a number of courts have found constitutional speedy trial violations. E.g., Williams v. United States, 250 F.2d 19 (D.C. Cir. 1957); United States v. Pardue, 354 F. Supp. 1377 (D. Conn. 1973).

CONCLUSION

For these reasons, the Petition for the Writ of Certiorari should be denied.

Respectively submitted,

BRUCE J. WINICK
American Civil Liberties Union
Foundation of Florida, Inc.
University of Miami School of Law
P.O. Box 248087
Coral Gables, Florida 33124

TERRY L. DEMEO
DeMeo & Sherman, P.A.
American Civil Liberties Union
Foundation of Florida, Inc.
3081 Salzedo Street
Coral Gables, Florida 33134

LOUIS R. BELLER
American Civil Liberties Union
Foundation of Florida, Inc.
420 Lincoln Road
Suite 238
Miami Beach, Florida 33139

Attorneys for Respondent

By: Bruce J. Winick
Bruce J. Winick

AFFIDAVIT OF MAILING AND SERVICE

BRUCE J. WINICK, a member of the bar of this Court, hereby certifies that a true and correct copy of the Brief in Opposition to Certiorari and Motion for Leave to Proceed In Forma Pauperis was mailed by depositing the same for mailing in a United States mailbox, with first-class postage prepaid, to the Clerk of this Court, and to ARTHUR JOEL BERGER, Assistant State Attorney, 6th Floor, 1351 Northwest 12th Street, Miami, Florida 33125, and to ANTHONY C. MUSTO, Assistant Attorney General, Department of Legal Affairs, 401 Northwest 2nd Avenue, Suite 820, Miami, Florida 33128, on this 7th day of August, 1981.

Bruce J. Winick

Bruce J. Winick

Sworn to before me this
7th day of August, 1981

Notary Public

NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES MARCH 20, 1984

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Respondent.

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

The Respondent, WILLIE ALLEN GARRETT, who is now held in Raiford Prison, Florida, asks leave to file the attached Brief in Opposition to Certiorari without prepayment of costs and to proceed in forma pauperis pursuant to Rule 46. Respondent has been permitted to proceed in forma pauperis at every stage of these proceedings and has had court-appointed counsel.

An unexecuted copy of Respondent's affidavit in support of this motion is attached hereto. Counsel for Respondent prepared and sent to Respondent a copy of this affidavit for his execution. However, because of delays in the mail, the executed copy has not as yet been returned to counsel. As a result, this Motion attaches an unexecuted copy, and counsel will submit the executed copy to the Clerk of this Court as soon as it is received.

Bruce J. Winick

BRUCE J. WINICK
American Civil Liberties Union
Foundation of Florida, Inc.
University of Miami School
of Law
P.O. Box 248087
Coral Gables, Florida 33124
(305) 284-2971

TERRY L. DeMEO
DeMeo & Sherman, P.A.
American Civil Liberties Union
Foundation of Florida, Inc.
3081 Salzedo Street
Coral Gables, Florida 33134

LOUIS R. BELLER
American Civil Liberties Union
Foundation of Florida, Inc.
420 Lincoln Road
Suite 238
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No._____

THE STATE OF FLORIDA, Petitioner,

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WILLIE ALLEN GARRETT, Respondent

AFFIDAVIT

I, Willie Allen Garrett, being first duly sworn according to law, depose and say, in support of my motion for leave to proceed without being required to prepay costs or fees:

1. I am the respondent in the above-entitled case.

2. Because of my poverty I am unable to pay the costs of said cause.

3. I am unable to give security for the same.

4. I believe that I am entitled to the relief granted by the District Court of Appeal of Florida, Third District, reversing my conviction and ordering the State of Florida to discharge me unless it shall elect to commence civil commitment proceedings within thirty days from the issuance of its mandate, which decision the Supreme Court of Florida decline to review.

_____
Willie Allen Garrett

Duly witnessed and sworn to before me,
a Notary Public, this _____ day of
August, 1981.

_____
Notary Public